

Embassy Liquor, Inc. and Wine, Liquor and Distillery Workers Union, Local One. Cases 2-CA-25585 and 2-CA-25988

July 25, 1994

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND DEVANEY

On June 28, 1993, the National Labor Relations Board issued a Decision and Order,¹ *inter alia*, ordering Embassy Liquor, Inc., the Respondent, to make whole unit employees for its failure to make the contractually required contributions to the Union's pension and insurance funds in violation of the National Labor Relations Act. On November 2, 1993, the United States Court of Appeals for the Second Circuit entered its judgment enforcing the Board's Order.

A controversy having arisen over the amount of fund contributions owed, on April 29, 1994, the Regional Director for Region 2 issued a compliance specification and notice of hearing alleging the amounts due the funds under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent failed to file an answer.

By letter dated May 26, 1994, counsel for the General Counsel advised the Respondent that no answer to the compliance specification had been received and that unless an appropriate answer was filed by close of business on June 9, 1994, summary judgment would be sought. The Respondent filed no answer.

On June 20, 1994, the General Counsel filed with the Board a Motion for Summary Judgment on compliance specification and petition in support, with exhibits attached. On June 23, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent again filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer

within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause being shown for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the amounts due the funds are as stated in the compliance specification, and we will order payment by the Respondent of said amounts to the Union's pension and insurance funds, plus interest accrued on said amounts to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondent, Embassy Liquor, Inc., New York, New York, its officers, agents, successors, and assigns, shall make whole the funds below, by paying them the amounts following their names, plus interest:²

Insurance Fund	\$12,943
Pension Fund	3,612

Dated, Washington, D.C. July 25, 1994

William B. Gould IV,	Chairman
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James M. Stephens,	Member
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Dennis M. Devaney,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

¹ 311 NLRB No. 119. (Not reported in bound volumes.)

² The above totals reflect payments that were due as of April 16, 1994. Liability is ongoing and arrearages continue to accrue.